

China's Labor Ministry Overhauls Regime for Resolving Labor and Personnel Disputes

June 7, 2017

Employment

Pursuant to the State Council's directive to build harmonious labor relationships and to strengthen the system for resolving labor disputes, the Ministry of Human Resources and Social Security (MOHRSS) recently revised two sets of arbitration rules. The revisions address new issues and provide clarification of existing regulations. The key objectives are to streamline the dispute settlement process and provide more effective and efficient mechanisms for resolving labor and personnel disputes. These rules will apply to both foreign-invested and domestic companies with employees in the People's Republic of China.

The amended rules are the Case Handling Rules for Arbitration of Labor and Personnel Disputes ("Case Handling Rules") and Organization Rules for Arbitration of Labor and Personnel Disputes ("Organization Rules") (collectively, the "Rules"). They were re-issued on May 24, 2017, effective July 1, 2017.

The revised Rules standardize the procedures for handling labor and personnel and strengthen the roles of personnel who work in China's arbitration system.

Changes to the Case Handling Rules

The revised Case Handling Rules incorporate, with some adjustments, certain provisions from other existing civil procedure and labor arbitration regulations. A key component is the Labor Dispute Mediation and Arbitration Law, which sets out the framework for the labor dispute resolution system, and provides the foundation upon which the Rules were originally promulgated.

The issues that are addressed and further clarified in this round of revisions include statute of limitations, jurisdiction of cases, recusal of certain individuals, deadlines for providing evidence, notice requirements and treatment of confidential materials, suspension of proceedings, prohibited acts during hearings, and types of cases subject to binding jurisdiction. In relation to the latter, the revised Case Handling Rules clarify that cases involving economic compensation would cover reparations paid under the following circumstances: imposing of non-competes, dissolution or termination of labor contracts, failure to enter into written contracts, imposing probation periods in violation of law, and dissolution or termination of labor contracts in violation of law.

The revised Case Handling Rules also set out the specific restrictions on the types of labor and personnel disputes that can be submitted and accepted for arbitration, in order to ensure the

efficient allocation and use of resources. Cases that (i) have been refused already by the arbitration commission, (ii) are the subject of pending arbitration or litigation cases, mediation documents or arbitral awards, or (iii) have resulted in court decisions that have already taken legal effect, will not be accepted for arbitration by the arbitration committee. However, cases that have been withdrawn from arbitration prior to a decision may be resubmitted for arbitration. Furthermore, only those with a direct interest in a case may submit it for arbitration, and any defendants must be specifically identified.

The revised Case Handling Rules also flesh out the general provisions concerning simplified handling and the handling of collective disputes in the previous version by replacing them with two sections, each providing comprehensive guidelines that provide greater clarity to these processes. The revisions set out the specific criteria for the types of disputes that would qualify for simplified handling, mainly disputes where the facts are clear and the outcome more certain, damages involving smaller amounts, i.e., below a statutory threshold equivalent to average annual income for the locality, and provide detailed guidance on implementing the simplified handling process. This is followed by a section that sets out detailed guidelines for handling collective disputes, which would apply to cases relating to collective agreements or involving 10 or more employees bringing a common claim against the employer.

Reflecting the government's desire to encourage the parties first try to resolve their disputes via mediation as opposed to going straight to arbitration, the revised Case Handling Rules provide detailed guidance on such mediations, linking them to the arbitration process. The revised Case Handling Rules also set out the process of formalizing the mediation agreements by having them reviewed and endorsed by the arbitration committee through issuance of a formal mediation document with legal effect.

Changes to the Organization Rules

Under the revised Organization Rules, ad-hoc arbitration organizations will be replaced with formal courts of arbitration to be established by the arbitration committee under the auspices of MOHRSS. These courts of arbitration, which will report to the arbitration committee, may be set up as necessary, as stationed tribunals in a fixed location, or as circuit and floating tribunals with traveling arbitrators in order to allow cases to be handled locally in more informal settings for the convenience of the parties.

The revised rules clearly set out the rights and obligations of arbitrators, grounds for their dismissal, and extend their terms from three to five years. The revised Organization Rules also provide necessary validation to the role of part-time arbitrators, clearly stipulating that they have the same rights and obligations as full-time arbitrators when mediating disputes. Under the revised Organization Rules, MOHRSS is charged with the task of setting up a training and appraisal regime for China's labor arbitrators, formulating the training syllabus, developing training materials and setting up instructor and questions databases.

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